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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re TREVOR W., A Person Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Respondent,

v.

STACY M.,

Defendant and Appellant.

B256525

(Los Angeles County
Super. Ct. No. CK80409)

APPEAL from an order of the Superior Court of Los Angeles County,
Philip L. Soto, Judge. Affirmed.

Janette Freeman Cochran, under appointment by the Court of Appeal, for
Defendant and Appellant.

Tarkian & Associates and Arezoo Pichvai for Respondent.

Stacy M. (mother) appeals from the juvenile court's denial of her petition under Welfare and Institutions Code¹ section 388.² She contends the court erred in finding she had not shown changed circumstance or that it would not be in her son's best interests to maintain his relationship with her. We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. 2009

On April 10, 2009, the Department of Children and Family Services (Department) received a referral alleging that mother had threatened to kill her three-month-old son, Trevor W., if maternal grandmother did not babysit him. The Department investigated the referral and interviewed the family. Mother had a history of psychiatric hospitalizations and was undergoing therapy for depression. Maternal grandmother stated that she had been Trevor's primary caretaker since his birth. Mother agreed to participate in a voluntary "family maintenance case" with the Department, and to see a therapist and psychiatrist. Trevor's father, Whitfield W. (father), agreed not to leave mother alone with Trevor.

On October 28, 2009, maternal grandmother reported that mother had refused to care for Trevor and, therefore, he was living with maternal grandmother. On December 15, 2009, maternal grandmother called the Department social worker and said that mother had become enraged at maternal grandmother and was now blocking her from leaving mother's apartment. Mother also got on the phone with the social worker and "scream[ed] profanities" at her. Trevor was in the car outside with a relative during this altercation, and maternal grandmother was eventually able to leave with him.

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise stated.

² Section 388 provides, "[a]ny parent or other person having an interest in a child who is a dependent child of the juvenile court . . . may, upon grounds of change of circumstance or new evidence, petition the court . . . for a hearing to change, modify, or set aside any order of court previously made"

On December 18, 2009, the Department filed a petition alleging that Trevor was at risk of neglect under section 300, subdivision (b), due to mother's mental and emotional problems. The court detained Trevor and released him to father, who had moved into maternal grandmother's home.

2. *2010*

On January 14, 2010, the court sustained the petition and removed Trevor from mother. The court released Trevor to father on the condition that he continue to reside with maternal grandmother or in another residence approved by the Department. Mother was granted monitored visits with Trevor and the court ordered that both parents be provided with family maintenance services.

In March 2010, father and maternal grandmother reported that mother became angry during visits with Trevor and they had asked her to leave. Mother's therapist did not recommend unmonitored visits for mother as mother was "not yet stable." However, in the following three months, father and maternal grandmother reported that mother's visits with Trevor went well.

In July 2010, the court found that mother was in partial compliance with her case plan and ordered the Department to continue to provide her with services. In August 2010, maternal grandmother evicted father from her house, but Trevor continued to live with her. In September 2010, mother's case manager reported that her attendance in therapy had been inconsistent and she had failed to keep her appointments with her psychiatrist or take her psychotropic medication.

In October 2010, mother moved in with maternal grandmother and maternal grandmother promised that Trevor's contact with mother would remain monitored. Mother enrolled full-time in cosmetology school, and by December 2010, maternal grandmother reported that mother's " 'attitude and emotional issues seem[ed] to have improved for now.' "

3. *2011*

On January 18, 2011, maternal grandmother told the Department's social worker that she had evicted mother from her home. Maternal grandmother said that the

previous day, mother had raised her voice at maternal grandmother while they were in the car and had then grabbed Trevor when she exited the car, saying “[h]e’s coming with me.” Maternal grandmother called the police who helped convince mother to give Trevor back to maternal grandmother. The next day mother yelled at maternal grandmother and took Trevor into her room, in violation of the monitored visitation order. Trevor was upset and cried for maternal grandmother, and eventually maternal grandmother convinced mother to give Trevor to her. Based on these events, maternal grandmother evicted mother and obtained a restraining order against her.

In February 2011, Trevor moved in with father, but then returned to live with maternal grandmother again for two weeks in March. Trevor then moved in with father again, but spent the weekends with maternal grandmother. In April 2011, father reported that he monitored Trevor’s visits with mother for an hour on Saturdays and that Trevor “is getting more attached to mother as he cries for mother when they leave her” In May 2011, the court terminated reunification services for mother.

In October 2011, mother reported that she saw Trevor once a week. In November 2011, mother showed up at Trevor’s day care center, cursed at the day care provider, and told Trevor it was his last day of school. Trevor began to cry and the day care provider said she was going to call the police, after which mother left.

3. 2012

On May 30, 2012, the Department filed a subsequent petition pursuant to section 342³ alleging that (1) two weeks prior, father had left Trevor with mother, and father’s whereabouts had been unknown since then, and (2) father’s abuse of marijuana rendered him incapable of providing regular care and supervision for Trevor. The court

³ Section 342 provides that “[i]n any case in which a minor has been found to be a person described by Section 300 and the petitioner alleges new facts or circumstances, other than those under which the original petition was sustained, sufficient to state that the minor is a person described in Section 300, the petitioner shall file a subsequent petition. This section does not apply if the jurisdiction of the juvenile court has been terminated prior to the new allegations. [¶] All procedures and hearings required for an original petition are applicable to a subsequent petition filed under this section.”

ordered Trevor detained from father and placed him with maternal grandmother. The court thereafter sustained the subsequent petition and ordered reunification services for father.

In August 2012, the Department reported that mother continued to have weekly monitored visits with Trevor for two to three hours. Trevor talked with mother during visits and maternal grandmother said he enjoyed visiting with her. In November 2012, the court terminated father's reunification services and set a section 366.26 hearing on the termination of parental rights for March 2013.⁴

4. *2013*

In February 2013, maternal grandmother submitted an application to adopt Trevor, who was now four years old. In March 2013, the Department reported that mother continued to have weekly monitored visitation with Trevor and that there were no "problems or concerns during the visitation." The Department further noted that Trevor was very bonded to maternal grandmother and he was thriving in her home.

On October 15, 2013, mother filed a section 388 petition seeking reinstatement of reunification services. Mother submitted evidence that she had completed parenting classes and participated in individual counseling. She argued that Trevor was bonded with her and his best interests would not be served by "further estrangement." The Department reported that Trevor said he wanted to live with mother and visit his maternal grandmother. The following month, mother withdrew the petition.

5. *2014*

On February 27, 2014, mother filed another section 388 petition again requesting modification of the court's order terminating her family reunification services. She requested that the court either return Trevor to mother or, in the alternative, reinstate reunification services and liberalize her visits to unmonitored "day, overnight and weekends."

⁴ The section 366.26 hearing was thereafter continued multiple times to allow the Department time to complete the adoption home study, to allow mother "more preparation time," and to allow "supplemental report[s]" to be filed.

In support of the petition, mother filed a declaration in which she stated that she saw Trevor almost every day during monitored visits, and visited him for three to four hours on weekdays and for the whole day on the weekend. She further stated that she had been living with her fiancé and his family for the past two years, and that the home could accommodate Trevor.

Mother also submitted evidence that she had completed an “active parenting now” course on September 26, 2010, and a four-hour “parent education and family stabilization” course on July 26, 2013. Furthermore, mother submitted letters from her therapist, doctors, family and friends supporting her petition. Mother’s individual therapist stated that mother had “developed better control of her emotions,” “was more cooperative,” and “deserve[d] this opportunity to mother her child” Mother’s psychiatrist wrote that mother was not in need of any psychotropic medication at this time. Eight of mother’s family members wrote letters of support stating that mother was a loving and appropriate parent to Trevor. Lastly, maternal grandmother wrote that she “would joyously raise [her] grandson but [] believe[d] that to not give [mother] an[] opportunity to parent Trevor on a full time [basis] would not be in Trevor[’s] best interest, he loves his mother, she has never abandoned him”

However, on March 26, 2014, the Department reported that maternal grandmother had withdrawn her support of mother’s petition. Maternal grandmother said that mother had cancelled her wedding, had “started using derogatory language toward her,” “[had] bec[o]me unreasonable again,” and “[t]he ugly side of old [mother] came back.” Maternal grandmother further expressed concern that mother would “take it out on Trevor and so she wants to protect Trevor by adopting him.” Trevor now said “I do not want to move in with my mom and [her fiancé]; I want to stay with [maternal] grandmother.”

On April 30, 2014, the court held a hearing on mother’s petition. Mother testified that, while she had visited Trevor every day for the last year or two, during the last six weeks, her visits had decreased due to maternal grandmother’s decision to restrict mother’s contact with Trevor. Mother admitted to using derogatory language

towards maternal grandmother. Mother also said that maternal grandmother's reference to her "ugly side" implicated mother's "anger issues" which mother was "working on" with her therapist. Mother further testified that she no longer lived with her former fiancé, that she planned to rent an apartment to stay in, and that, if Trevor were returned to her, she would rent a bigger apartment.

The court denied the petition and stated that "I don't see from what I've been presented by mother that circumstances have changed, or it's beneficial to the child to grant what the mother has asked for in the 388 [petition]. The child has a strong bond with the grandmother who is acting as the caretaker and who has continued to act as the parent all the way along through this case. . . . [A]t this point . . . I believe it's not in the best interest as to this child to return to mother or . . . reinstate reunification with services or even go to unmonitored visits." Mother timely appealed.

CONTENTION

Mother contends that the court erred in denying her section 388 petition because she had shown changed circumstances and it was in Trevor's best interests to maintain his relationship with her.

DISCUSSION

At a hearing on a section 388 petition, "[t]he petitioning party has the burden of showing, by a preponderance of the evidence, that (1) there is a change of circumstances or new evidence; and (2) the proposed change in the court's previous order is in the child's best interests. [Citations.]" (*In re Carl R.* (2005) 128 Cal.App.4th 1051, 1071.) Section 388 "provides the 'escape mechanism' that . . . allow[s] the [dependency] court to consider new information" after efforts to reunify the parents with the child have been terminated and the focus has shifted to the child's need for a permanent, stable home with a nonparent. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) "Whether the juvenile court should modify a previously made order rests within its discretion, and its determination may not be disturbed unless there has been a clear abuse of discretion. [Citation.]" (*In re J.C.* (2014) 226 Cal.App.4th 503, 525.)

Here, mother contends that she met her burden of showing a change of circumstances based on evidence that (1) she had completed parenting courses, (2) she had participated in therapy and her therapist reported she had made progress, (3) her psychiatrist found that mother no longer needed any psychotropic medication, (4) maternal grandmother had (at one time) believed mother “deserved the opportunity” to parent Trevor, and (5) mother’s relationship with maternal grandmother had improved.

With respect to the last two reasons listed, by the time of the hearing on mother’s petition, maternal grandmother no longer believed mother could safely parent Trevor and mother’s relationship with maternal grandmother had deteriorated again. As for the parenting courses, mother submitted evidence that she had completed one parenting course *prior* to the termination of her reunification services, and only one more recent four-hour course. Furthermore, the letter from mother’s therapist stating that mother had “developed better control of her emotions” was undercut by maternal grandmother’s more recent statement indicating that mother had inappropriately vented her anger at maternal grandmother again. Even mother admitted that she still had “anger issues” and had recently used “derogatory language” aimed at maternal grandmother.

This evidence did not show a sufficient change of circumstances in mother’s behavior warranting liberalization of her visits with Trevor, reinstatement of reunification services, or return of Trevor to her custody. “A petition which alleges merely changing circumstances and would mean delaying the selection of a permanent home for a child to see if a parent, who has repeatedly failed to reunify with the child, might be able to reunify at some future point, does not promote stability for the child or the child’s best interests. [Citation.] ‘ “[C]hildhood does not wait for the parent to become adequate.” ’ [Citation.]” (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47 [juvenile court found that parent’s circumstances “were changing, rather than changed”].)

Even if there were evidence of changed circumstances, the court did not abuse its discretion in finding that the requested relief was not in Trevor's best interests. "After the termination of reunification services, the parents' interest in the care, custody and companionship of the child are no longer paramount. Rather, at this point 'the focus shifts to the needs of the child for permanency and stability' [citation], and in fact, there is a rebuttable presumption that continued foster care is in the best interests of the child. [Citation.] A court hearing a motion for change of placement at this stage of the proceedings must recognize this shift of focus in determining the ultimate question before it, that is, the best interests of the child." (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.)

Mother cites to *In re Kimberly F.* (1997) 56 Cal.App.4th 519 for the factors the court should consider in determining a child's best interests in connection with a section 388 petition. Those factors are: "(1) the seriousness of the problem which led to the dependency, and the reason for any continuation of that problem; (2) the strength of relative bonds between the dependent children to *both* parent and caretakers; and (3) the degree to which the problem may be easily removed or ameliorated, and the degree to which it actually has been." (*Id.* at p. 532.)

Mother argues that her mental and emotional problems at the start of this case were not "serious" compared with other forms of child abuse, and that her therapist's and psychiatrist's letters showed that she no longer suffered from those problems. Mother further argues that Trevor has a strong bond with her that should be preserved. Mother acknowledges that Trevor is also bonded with maternal grandmother but argues that if the court reinstated reunification services or liberalized mother's visits, Trevor could maintain his relationship with both of them.

In considering the *Kimberly F.* factors, we note that they are not exhaustive and that the focus, once reunification services have been terminated, is on the child's need for permanency and stability. (*In re J.C.*, *supra*, 226 Cal.App.4th at pp. 527-528.) Here, Trevor was five years old at the time of the section 388 hearing and had lived with maternal grandmother for most of his life. Even during the months Trevor had been in

mother's care when he was an infant, maternal grandmother had been his primary caretaker for at least part of that time. In comparison, Trevor's contact with mother had been limited to monitored visits the past four years. In addition, just prior to the section 388 hearing, Trevor expressed his desire to continue living with maternal grandmother, and maternal grandmother was willing to provide him with a permanent and stable home.

This evidence showed that Trevor's bond with maternal grandmother was strong, and that he was bonded with mother to a lesser extent. Furthermore, although there was evidence mother had made progress in ameliorating the problems that led to the dependency, there was also evidence mother was still emotionally unstable and not ready to have unmonitored contact with Trevor or provide him with a secure and stable placement. On these grounds, the court did not abuse its discretion in finding it was not in Trevor's best interests to grant mother's petition.

DISPOSITION

The order is affirmed.

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LAVIN, J.*

WE CONCUR:

KITCHING, Acting P. J.

ALDRICH, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.